IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EUGENE FLOYD	:	**CIVIL ACTION**
	:	
v.	:	
	:	
BLACK SWAN SHIPPING CO., LTD.	:	
and NOBIS SHIPPING GMBH	:	**NO. 98-4207**

MEMORANDUM ORDER

This is an action by a longshoreman for injuries sustained while working aboard the M/V Torben in Philadelphia which he alleges was controlled by defendants.[1] The court permitted counsel for Nobis Shipping to withdraw after their repeated attempts to maintain contact with Nobis and to pursue discovery ordered by the court failed.

Presently before the court is plaintiff's Motion for Sanctions in the Form of a Default Judgment for defendant's failure to provide discovery as ordered by the court on March 28, 2002 and to appear through counsel as ordered by the court on May 3, 2002.

A court may render a judgment by default as a sanction against a party who fails to obey an order to provide discovery or fails to appear for deposition. See Fed. R. Civ. P.

[1] It appears that Black Swan Shipping is now defunct and that it was never effectively served with process. It has never appeared in this action.

37(b)(2)(C) & 37(d).[2] A failure to provide discovery or to comply with a court order to do so may also fairly be viewed as a failure to defend which justifies an entry of a default judgment under Fed. R. Civ. P. 55(b)(2). See Bryant v. City of Marianna, Fla., 532 F. Supp. 133, 137 (N.D. Fla. 1982) (such conduct "denies plaintiffs' right to a determination of their claims as well as the court's duty to dispose of cases before it"). See also National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639, 642-43 (1976); Philips v. Medical Systems Intern., V.B. v. Bruetman, 982 F.2d 211, 214 (7th Cir. 1992) (default judgment against defendants for refusal to provide discovery); Hoxworth v. Blinder Robinson & Co., Inc., 980 F.2d 912, 918-19 (3d Cir. 1992) (failure of corporate defendant to appear through counsel warrants default judgment); Eagle Assocs. v. Bank of Montreal, 926 F.2d 1305, 1310 (2d Cir. 1991) (default judgment against corporate party failing to comply with court order to obtain counsel); U.S. v. De Frantz, 708 F.2d 310, 312 (7th Cir. 1983); (default judgment for failure to appear for deposition with dubious excuse); Jordan Int'l Co. of Del. v. M.V. Cyclades,

[2] In assessing a request for such a sanction, the court considers the extent of each party's responsibility for the failure properly to litigate; prejudice to the adverse party; any history of dilatoriness by the recalcitrant party; the willfulness of the offending conduct; the adequacy of other sanctions; and, the merit of the claim or defense. See Harris v. Philadelphia, 47 F.3d 1311, 1330 n.18 (3d Cir. 1995); Hicks v. Feeney, 850 F.2d 152, 156 (3d Cir. 1988).

782 F. Supp. 25, 27 (S.D.N.Y. 1992) (default judgment against defendant for failure to comply with discovery order); U.S. v. Dimucci, 110 F.R.D. 263, 267 (N.D. Ill. 1986) (default judgment against defendants who failed to appear for deposition).[3]

In view of former counsel's unsuccessful efforts to maintain contact with Nobis and facilitate discovery, Nobis itself clearly bears sole responsibility for the failure to provide discovery and to appear through new counsel as ordered.

The inability during the discovery period to obtain information from a defendant regarding pertinent issues is obviously prejudicial to a plaintiff in his attempt to prosecute his claim and obtain a resolution of his lawsuit. See Adams v. Trustees, N.J. Brewery Trust Fund, 29 F.3d 863, 874 (3d Cir. 1994) (prejudice encompasses deprivation of information from non-cooperation with discovery). Defendant's failure to secure counsel and cooperate in providing discovery has clearly prejudiced plaintiff in his ability to resolve his claim.

Defendant has been recalcitrant. Nobis ceased to cooperate with former counsel and has failed to secure the entry of appearance of new counsel by June 14, 2002 as ordered. Nobis

[3] A court also has the inherent power to resolve through appropriate sanctions a case that cannot otherwise be disposed of expeditiously because of the willful inaction or dilatoriousness of a party. See Chambers v. NASCO, Inc., 501 U.S. 32, 34 (1991); Link v. Wabash R.R. Co., 370 U.S. 626, 630-32 (1962); Hewlett v. Davis, 844 F.2d 109, 114 (3d Cir. 1988).

has not responded to the instant motion and has not otherwise offered any explanation for its continuing failure to comply with the court orders. A persistent failure to honor discovery obligations and related court orders must be viewed as "a willful effort to evade and frustrate discovery." Morton v. Harris, 628 F.2d 438, 440 (5th Cir. 1980). See also Jourdan v. Jabe, 951 F.2d 108, 110 (6th Cir. 1991).

Given the complete recalcitrance of Nobis and the difficulty in enforcing an order awarding monetary sanctions against a party in Germany, such an alternative would be extremely unlikely to achieve compliance.

Plaintiff is clearly being prejudiced by his inability to adjudicate his claim. A court cannot allow a defendant to obstruct the orderly conduct of litigation, effectively avoid any prospective liability and deprive a plaintiff of any right to redress by not cooperating with counsel and refusing to obtain new counsel after its frustrated prior counsel withdraws.

The meritoriousness of a claim or defense is to be determined from the face of the pleadings. See C.T. Bedwell Sons v. International Fidelity Ins. Co., 843 F.2d 683, 696 (3d Cir. 1988); Poulis v. State Farm Fire and Cas. Co., 747 F.2d 863, 870 (3d Cir. 1984). Nobis filed an answer denying liability and a motion asserting lack of personal jurisdiction. It is difficult conscientiously to characterize any defense as meritorious when

the defendant refuses to subject it to scrutiny through the discovery process. Moreover, as the court apprised Nobis in the order of May 3, 2002, a refusal to provide court ordered jurisdictional discovery after appearing and contesting personal jurisdiction may be treated as a waiver of that challenge, with a resulting presumption of jurisdiction. See Insurance Corp. of Ireland v. Compagnie des Bauxites, 456 U.S. 694, 706 (1982).

The pertinent factors weigh significantly in favor of granting the default judgment requested by plaintiff.

ACCORDINGLY, this day of July, 2002, upon consideration of plaintiff's Motion for Sanctions in the Form of a Default Judgment (Doc. #34) and in the absence of any response thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and judgment will be entered against defendant Nobis after the conclusion of appropriate proceedings to determine damages.

BY THE COURT:

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JAY C. WALDMAN, J.